Title of the Article: Is Ombudsing Like Mediation?

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"Is Ombudsing Like Mediation" address a question often asked of ombuds.

Those unfamiliar with the field often equate ombudsing with mediation. The author, by juxtaposing the process styles of a campus ombuds and a mediator illustrates that they are two very distinct processes.

IS OMBUDSING LIKE MEDIATION?

Introduction

The author, in looking for direction for her own growth and development, conducted a thorough review of the literature. In so doing it became apparent to the author that several areas had not been fully explored[1]. One of the areas discovered was that of the differences between ombudsing and mediation. When first introduced to the ombuds concept the author thought to herself - ombudsing is like mediation. Additionally, the author found that more often than not, when informing someone within the community that you are an ombuds, the individual within the community can not only **not** pronounce the word, but they don't know what an ombuds is or does. If they have an inkling of what an ombuds is they liken it to mediation. As the author delved deeper into this topic it became evident that ombudsing and mediation are very different processes and that the subject would make a good paper topic. By process the author refers to a series of actions that bring about a result. That is to say, the mediator goes through a series of actions with his disputants which results in resolving interpersonal conflicts, surfacing interests, negotiating differences, and reaching an agreement. The ombuds, on the other hand, goes through a series of actions that results in addressing the concerns of the complainant(s) in interest of working toward resolution of the complaint.

It is important to note that an ombuds process is "best described in broad terms". The series of actions taken by an ombuds may vary widely depending on the "concerns of the complainant, information the ombuds gathers along the way", the views of respondent(s) (if any), "institutional norms and values", existing institutional policies, procedures, guidelines, and the individual style of the

ombuds. Additionally, the conflict between disputants in a mediator's process is often fully resolved with the disputants reaching a mutual agreement. With an ombuds process the ombuds may discover at the conclusion of his or her problem solving endeavors that the complaint is neither fully resolved nor resolved to the satisfaction of the complainant[2].

In short, ombuds don't mediate complaints they 'ombud' complaints. It is a mistake to use the terms synonymously and to assume the processes are parallel. It does a disservice to both professions. Campus ombudsing contains a strong educational component. In order to fully realize this role an ombuds must be able to educate complainants about the different functions, roles, and modes of problem solving an ombuds draws from in the course of providing ADR services – modes of problem solving which include both the process of ombudsing and the process of mediation. Striving to clear up misunderstandings about the profession by clearly delineating the distinctions between respective processes is necessary in order to clear up misunderstandings and establish the field of ombudsing as unique and distinct from mediation.

This paper focuses on the topic of the distinctions and differences between the process of ombudsing and mediation as well as the common ground found between the two and are organized into seven sections.

1) Gathering empirical evidence,

2) review of pertinent literature,

3) Consideration of possible reasons why the topic of ombuds processes has not been at the forefront of study,

4) Provision of a brief synopsis of campus ombudsing and mediation,

5) Discussion about how the author gathered the empirical evidence to support her view,

6) Presentation of the similarities, distinctions and differences between the ombuds' process and the mediator's process.

7) Concluding remarks

After reading this work the reader will be able to contribute to the betterment of the field by gaining the understanding necessary to educate the general populace, complainants, and new ombuds about the distinctions and differences between ombudsing and mediation.

Gathering Empirical Evidence

In order to gather the empirical evidence necessary to effectively articulate the author's point of view that ombudsing and mediation are not parallel processes, and it is a mistake to assume so, the author inductively reflected upon her personal ombuds process and the mediation process learned through a mediation certification program. The mediation process learned was that of Kenneth Cloke's eclectic eight step process (Appendix 1). With regard to the author's personal style of ombudsing, in spring of 2002, the author conducted a single office study considering the following: her personal style of ombudsing, the style of her colleague Geoffrey Stearns, the style of their co-facilitation, and their many debriefing sessions about cases. From this study the author broke down her process[3] into the following steps[4]: initial contact, log in of complainant, intake interview, ombuds preparation, complainant preparation, welcome and orientation, information gathering, support and feedback, education, brainstorming, delineation of options, problem solving & strategy development, implementation of an action plan, additional meetings, complaint either resolved to the satisfaction of the client or not resolved, follow-up, & closure (Appendix II)[5]. From this information three table were created: Table 1, a juxtaposition of the broad scope of the language utilized within the field of ombudsing and mediation; Table 2, a

juxtaposition of the two processes; and Table 3, a juxtaposition of the different issues handled by mediators and campus ombuds. A review of Appendix I, Appendix II, Tables 1, 2, and 3 succinctly convey that they are not parallel processes and are indeed very different art forms. This study was augmented by a sound theoretical base cultivated by a thorough review of the literature[6].

A Review of Pertinent Literature

From the literature one article surfaces that is relevant to the topic of the differences between ombudsing and mediation; Tim Griffin's article "Similarities and Differences Between Campus Ombudsing and Mediation" (Griffin 2002). Within this article Griffin notes that the issues in mediation surround interpersonal conflict and that although the ombuds may be called upon to assist in resolving an interpersonal conflict, the campus ombuds, in general, handles different problems (Griffin 2002). Griffin's article primarily focuses on "similarities and differences between mediation centers and ombuds offices on college and university campuses" (Griffin 2002). While the article does not delve into the similarities and differences between respective processes it represents a wonderful point of departure for further exploration.

While the mediation literature is rich in material defining the processes of various styles of mediation, the field of ombudsing has not placed a great deal of focus on the process of ombudsing. Focus has been placed upon the following: defining the history and spread of the ombuds concept from its inception through the late sixties and early seventies; building new ombuds offices from the ground up; learning to ombuds having never been an ombuds before; delineating the functions and roles of the ombuds; conducting complete analyses of the structural and functional features of both the "executive" and "classical" ombuds models;

using these models as templates for spawning the transference and diversification of the ombuds concept; defining the power and jurisdiction of the ombuds; identifying the resources and sizes of ombuds offices; identifying the types of complaints handled; defining the skill sets needed to be an effective ombuds; and developing Standards of Practice and Code of Ethics that define what an ombuds is and does, the essential characteristics of an ombuds, suggested qualifications of an ombuds, the limitations of an ombuds, and definition of four different categories of ombudsing: legislative, executive, organizational, and advocate. Additionally, focus has been placed upon developing professional ombuds organizations as a resource for mentoring, education, and networking. Professional organizations whose members, like ombuds scholars, have made significant contributions to the field by producing professional conferences, providing ombuds training, writing for professional journals, publishing professional journals and newsletters, developing support systems through list servs, and publishing websites.

From these areas of focus a single work surfaces which discusses a campus ombuds process; *Academic Ombudsing: Contributions of Research to Practice.* This work, by pioneer campus ombuds Dr. Lois Price Spratlen, discusses the process style developed, tested, and refined by Dr. Lois Price Spratlen (Price Spratlen 1991). The term process style is utilized to acknowledge that ombudsing is not a science, but an art, and that there is not a singular process that can aptly portray individual styles of ombudsing – nor a single process that suits all sectors of ombudsing. In conducting research for this paper another ombuds process style surfaced. In order to receive feedback from colleagues about this topic the author distributed the initial draft of this work through the TOA, UCOA, USOA, and ACCUO[7] list servs. Tim Griffin responded to the query for feedback via email followed by a lengthy telephone conversation and additional emails. Griffin has

developed, out of training necessity, an educational tool which outlines his personal style of ombudsing. The educational tool is called *Steps in Working With Consultees* (Griffin 2004). It is the author's intent to continue exploring, qualifying, and defining ombuds processes. Not only within the field of academic ombudsing but other fields as well. Seed findings in the campus ombuds processes defined by the author, Lois Price Spratlen, and Tim Griffin indicate that there might be a method to the madness in that the art of these respective processes share common threads that developed independent of each other. A suggested next phase of research would entail development of a research questionnaire which focuses on identifying individual ombuds processes within the different sectors of ombudsing. From the information gleaned fundamental processes as well as artistic variations of individual ombuds styles can be identified. A better understanding of ombuds processes will provide trainers, educators, and mentors the tools necessary to teach budding ombuds the general "how to" of ombudsing with room to develop one's individual style.

Possible Reasons for the Lack of Focus in the Area of Ombuds Processes

The lack of focus in the area of ombuds processes may be due, in part, to the fact that in order to practice as an ombuds neither ombuds certification or an advanced degree is required except for in the field of long term care ombudsing (LTCO). LTCO is one type of ombudsing out of some 54 different types of ombuds[8]. While training manuals as well as training opportunities exist a rigorous certification process has not been developed for the 53 other types of ombuds which are presently lumped into three different categories: legislative, executive, and organizational (LTCO are lumped into the category of advocate ombuds). Looking at the resources within the field of federal and state mandated long term care ombudsing it becomes evident that the field has placed a strong emphasis on

developing ombuds certification programs in order to meet volunteer ombuds training needs. The certification programs vary from state to state and serve not only the certification needs within state offices but needs within regional offices. From a place of pragmatic need LTCO practitioners have worked together to develop training materials suited for certification programs.

These materials have been rigorously reviewed and approved by respective states. If one is devising training materials to train ombuds that are mostly volunteers from diverse walks of life, it becomes essential to provide information not only about ombuds history, standards and ethics, functions and roles of the ombuds, laws pertinent to the practice, skill sets needed, the nature of the institutions and communities served, but to **also** provide information about **how** to ombuds. That is to say, what are the steps? What is the process? Do the steps progress in a firm structured manner or does the progression of steps vary from case to case? Are all steps used in order to address an issue or are only some steps used in some cases and not others? How does one ombuds from the initial receipt of a complaint towards the degree of resolution possible? Within LTCO training materials one discovers the nuts and bolts of the "how to" of the LTCO process. Within LTCO training manuals this training component is termed *the complaint process.* Prospective ombuds are taught that one will develop an individual style within the framework of the *complaint process* taught. In that other sectors of ombudsing have not placed an emphasis on developing certification (or developing materials suited for teaching courses on ombudsing in institutions of higher learning), but have placed focus elsewhere, it is conceivable that the "how to" of ombudsing in simple terms has not been extensively developed. There are a few separate instances where the term "complaint process" surfaces in the field of ombudsing, but the concept is not widespread.

Complaint process terminology and respective flow charts can be found on the Credit Ombudsman Service Limited's website as "The Credit Ombudsman Dispute Resolution Process"; on the City of Detroit Ombudsman's website as "Complaint Process Explained"; and on the Provincial Ontario Ombudsman's website as "The Complaint Process"[9]. The lack of focus in the area of ombuds processes may also be due to the field's rapid growth in the late 60's and early 70's. A rapid growth coined by scholars as 'ombudsmania' – a period of time when the ombuds concept spread rapidly across the globe and was transferred to a large variety of settings[10].

A Brief Overview of the Processes

Campus ombuds may use mediation techniques, but this is not the full range of what ombuds do. Ombuds serve specific communities associated with an institution and provide their services free of charge. The institution the ombuds provides services to covers the costs of maintaining the office: costs such as salaries, administrative costs, travel expenses, and continuing education. The campus ombuds institution is marked by the essential characteristics of independence, confidentiality, informality, and impartiality. They do not advocate for one side of the other, but rather, advocate for a fair process or outcome.

The ombuds, in the course of complaint handling, may access a support system comprised of office colleagues as well as colleagues within the greater ombuds community. The ombuds utilizes a procedural approach with a strong emphasis on analytical problem solving, education, and empowerment. The form of problem solving is a traditional rationale approach involving problem

[9] A recent internet search indicates that the term "ombuds process" is beginning to surface on other websites where they did not appear in 2002- 2004 internet researches. Although mentioned, the term is used loosely and not thoroughly delineated : http://www.dr.bbb.org/autoline/pub_ombud.asp http://academic-senate.berkeley.edu/cr/ http://www.external.ameslab.gov/techtransfer/ombuds.html http://education.uoregon.edu/feature.htm?id=1393

[10] In conducting a review of the literature there are approximately 52 different types of ombuds. This number continues to grow as the field expands.

clarification, problem description, analyzing causes, surfacing and identifying options, assessing the options, choosing one, implementing it, and evaluating the outcome. Institutional factors such as policies, procedures, and guidelines; departmental power structures and cultures; existing grievance mechanisms; and other ADR resources on campus are integral considerations. Additionally, community factors such as staff, student, and faculty cultures, norms and values impact the complaint resolution process. The ombudsman is the individual who devises the means of complaint resolution integrating feedback from the complainant in order to design an action plan which best suits the complainant's set of needs. In the course of implementing complaint resolution strategies other departments and individuals become a part of the process as sources of referral, information, and provision of different perspectives of the issue at hand. The skill set of the ombuds is much broader than the mediator due to a much more complex matrix associated with the functions of the ombuds and the roles played out in order to carry out these functions. Due to the complexity of the matrix the ombuds process may require a great deal more time to resolve an issue and is far more analytical and much less intuitive and organic than the mediation process.

The goal of the mediator is to help two or more disputants resolve the interpersonal conflict that stands in the way of disputants abandoning positions to seek the common ground generated by like underlying interests. The parties pay the mediator directly and are brought to a neutral space that is provided by the mediator and a specific window of time is established for the work. Specific guidelines are established and a mediation agreement is discussed and signed before the disputant storytelling begins. One of the most striking features of the mediation process, and how it differs from the ombuds process, is the organic flow inherent to the resolution process. It is as if the process itself has a mind of its

own with the process being in control rather than the mediator or the disputants. The mediator's primary role is to be present within the chaos of the interpersonal conflict as a witness- to align his or her intuition and history of experience with the flow of resolution which is unique to each grouping of disputants – and to allowing the appropriate questions to surface. The questions that service guide the mediation toward the end goal of negotiating the differences to reach an agreement. While the ombuds may play the role of an objective ethics officer, making recommendations that support a fair process or outcome; the mediator allows the parties to decide for themselves what solution is agreeable to both. The mediator, although not an ethics officer, may interject feedback when a disputant strays from the pre-established discussion guidelines such as reminding the disputant to not interrupt. The mediation process is stripped of the complexities inherent within the ombuds process generated by the aforementioned components. Given the interpersonal nature of the conflict it is a much more intimate process with the potential to bring healing and transformation. Disputants respectively share their points of view, express their feelings which are acknowledged and validated, and a better understanding of the other's perspective is engendered. Misunderstandings are clarified and it is not at all uncommon for one party to apologize to another when he or she discovers that something they said or did harmed the other. Not only is an agreement reached but the disputants may spiral out of the conflict and obtain a sense of peace and well-being by letting go of the past and moving forward into the future.

Common Ground

Because ombudsing and mediation belong to the same family as ADR similar tools are found within respective toolkits. For both fields the process is informal, confidential, and voluntary. The ombuds and mediator alike share skill sets which

include the arts of active listening, practitioner questioning, and complainant storytelling, reframing, brainstorming, and problem-solving. Both fields place a strong emphasis on the importance of empathy and compassion. Standards of Practice exist for mediators and ombuds alike and the Standards stress the importance of principles such as impartiality and confidentiality. With regard to confidentiality mediators enjoy a "mediator's privilege" while campus ombuds do not[11]. In that many campus ombuds provide mediation services in the course of complaint handling they receive mediation training and develop mediation skill sets that become woven into their practices. Mediation training may include information about the nature and causes of conflict, the differences between constructive and destructive conflict, key principles of negotiation such as "separating the people from the problems" and "surfacing interests" (Fisher, Ury, 1983), conflict management skills, active listening skills, the dynamics of storytelling, and so on. In addition, existing ombuds training manuals include information pertaining to conflict, negotiation, and conflict management (UCOA, 1995).

Functions and Roles

While the primary function of ombudsing is complaint handling and mediation mediating disputes, the literature exposes intriguing commonalities and differences with regard to the roles played by ombuds and mediators. Both ombuds and mediators may play the roles of host/ess, interior designer, educator, playing field leveler, counselor, and emulator. On the other hand, respective fields galvanize some roles that the other does not. Ombuds are not contractors, rule makers, or chairs, as are mediators; and mediators are not investigators, coaches, exculpatory, system humanizers, fair process advocates, conscience of an entity, crisis coordinators, restorative justice facilitators, change agents, trends analyzers,

annual report and recommendation creators, or shuttle diplomats as are ombuds. A striking difference between the two fields is that ombuds, in the great majority of cases, initially receive complaints from a singular complainant while the mediator works with two or more disputants. This creates a strikingly different dynamic which will be discussed later within this paper.

Use of Time

The use of time varies greatly between the two fields. In ombudsing the process may end after the **preliminary proceedings** and **intake** phases. This occurs when the complainant is either referred to another office, seeks an answer to a simple question, or merely wants to tell his/her story and take no further action. If the complainant chooses to continue with the process, in the author's experience, the first meeting lasts around an hour. As previously noted, the remaining phases of the process may require additional meetings in order to assess the problem, problem solve, and design an action plan. In the author's experience a case might go on for several months, or even, in some rare instances, several years. In ombuds Tim Griffin's experience, due to the high volume of individuals served the ombuds generally meets with the individual once (Griffin, T. pers. comm. 7.29.2004). The mediation process is designed to be completed in a single session which is approximately two hours in length (Cloke 2000). After an agreement is reached the relationship between the mediator and the disputants ends and no further time is required of the mediator (Cloke 2000).

Investigation

The United States Ombudsman Association has distinguished governmental ombudsmen from mediators and other alternative dispute resolution professionals by their "ability to investigate impartially and make findings and recommendations" (United States Ombudsman Association, 2002). The ability to

investigate and make findings and recommendations also holds true for campus ombuds. In some cases the ombuds is called upon to conduct an investigation. He/she may use open or concealed investigation to gather the information necessary to develop an intervention plan. In one case a Department Chair asked the author to investigate a student's complaint about an abusive instructor in the classroom setting. The Chair of the department met with the student and became overwhelmed by the intensity of the student's tearful and traumatized recounting of events. The Chair frankly admitted that he/she did not know how to manage the conflict and asked for the author's assistance. The author's investigation included interviews with other students in the classroom, the professor of the class, the teaching assistant of the class, and the student who felt he/she had been abused. The author reported his/her findings to the Department Chair and provided some simple recommendations enabling the Department Chair to resolve the issue with relative ease. The student was apprised of the investigation and retracted her allegations illustrating the exculpatory role (Anderson 2001) an ombuds may play in the course of complaint handling.

Juxtaposing Processes

In assessing the different phases of the mediator's and ombuds' process it becomes clearly evident that the initial phases of the ombuds and mediation processes serve similar purposes; that of educating and welcoming the alternative dispute resolution consumer(s). For both the mediation process and the ombuds process attention is given to spatial design resulting in creating an atmosphere conducive to the task at hand (Griffin 1994, Cloke 2000). Both the mediator and ombuds welcome the party (or parties), briefly review respective processes, discuss confidentiality, may offer something to drink, and answer preliminary questions (Cloke 2000, Price Spratlen 1992). While the mediator presents a pre-

mediation agreement for review and signature, discusses the possibility of caucusing as well as ground rules, the ombuds does not. The ombuds has no need for caucusing or ground rules in that he/she initially serves a single complainant. In the initial phase of the ombuds process the ombuds uses tools the mediator does not use such as an intake form, a complainant chronolog, or complainant profile sheet.

After initial phases of respective processes are complete both processes move forward into an information gathering phase. As previously expressed both the ombuds and mediator use the arts of active listening, storytelling, and practitioner questioning. In Cloke's training seminars he discusses the multi-layered structure of stories. On occasion, contingent on the case, the ombuds may also facilitate surfacing the deeper layers of the story where the heart of the matter often lies. For example, in one case handled by the author the presenting complaint was that of a grade complaint. As the author worked with the complainant it became evident that underlying issues were present. For instance, the department providing misinformation, possible violation of the Faculty Code of Conduct, and hostile uncivil behavior of a Dean and Department Chair. With regard to storytelling the mediator begins with asking one disputant to tell his/her story while the other listens. The action is then reciprocated allowing the other disputant to tell his/her story from his/her perspective (Cloke 2000). This is extremely different than what one encounters in the ombuds setting.

As previously expressed, the ombuds initially gathers information from a single complaint. The respondent, or source of the conflict/problem is not initially present (and may never be present), hence the tension that exists between two complainants in conflict is not present in the alternative dispute resolution workspace. That is not to say that the single complainant does not bring with

him/her the energetic expression of a negative emotion, but rather, the dynamic is quite different when two disputants are present rather than one complainant.

Tim Griffin, in his article “Similarities and Differences Between Campus Ombudsing and Mediation”, pinpoints the essence of these differences beautifully (Griffin 2002). Griffin expresses that the complainant in an ombuds setting typically wants:

> *“their perceptions challenged or affirmed, appropriate institutional policies and procedures identified, and a set of options developed that could ultimately result in the resolution of their concern. While one of the options might be mediation or some other form of conflict resolution strategy for situations that involve traditional interpersonal conflict, the options provided by the ombudsperson are more likely to focus on steps that the consultee can take individually to resolve the concern presented. These could include items such as referral to counseling, to an administrator with the authority to make an exception to policy, or to an existing grievance or appeal process”. (Griffin 2002)*

In addition, the author has noted that during the mediation and ombudsing storytelling phases one’s state of consciousness is extremely different. In the mediation setting the mediator grounds into a deep place of impartial empathy and becomes a healing balm within the conflict. The mediator serves as an intuitive guide within the turmoil unraveling the hold of negative emotions, misunderstandings, and “I won’t budge” positions. The ombuds most often deals with a singular complainant. While the complainant is engaged in telling his/her story the ombuds digests the story and begins to visualize the scenario and make connections between varied elements of the issue. The ombuds interjects

questions in order to get a fuller understanding of the presenting issues. In note taking the ombuds may map out all of the elements.

Negative Emotions

After storytelling the mediation process moves into surfacing negative emotions. Kenneth Cloke defines conflict as a disagreement between two or more people (or aspects of oneself) and presence of a negative emotion (Cloke 2000). Examples of negative emotions include: anger, fear, distrust, anxiety/worry, disappointment, and frustration (Conflict Research Consortium, 1998). Daniel Goleman, in his book *Emotional Intelligence*, notes the following about emotions. They "are self-justifying with a set of perceptions and proofs all their own". In addition he notes that when emotions are in control "the emotional mind harnesses the rational mind to its purpose, thus distorting past memories and current realities" (Goleman 1995). While the mediator always acknowledges negative emotions the ombuds does not. As previously expressed, the ombuds **initially**[12] meets with a single complainant that comes to the discussion table with issues other than intrapersonal conflict (See Table 1). Because of this negative emotions are not always present and may not be a part of the ombuds process. Sometimes this is due to the nature of a particular culture. For instance, faculty may opt to refrain from exhibiting any emotional expression. If the complainant does not want to air his/her emotions the ombuds accepts and respects this boundary. When negative emotions are present the ombuds makes space for acknowledging and validating the emotions enabling the complainant to move forward in the process.

Power Imbalances

Both mediators and ombuds deal with power imbalances but in different ways. The mediator deals with imbalances directly by addressing root issues that

affect both disputants (Cloke 2000). In the ombuds workspace there is initially one complainant as opposed to two disputants hence only half of the problem enters into the workspace. The ombuds questions the complainant in order to ascertain the complainant's perception of existing power imbalances and factors this in when strategizing, problem solving (which may include storytelling of the respondent), and developing an intervention plan. In addition, ombuds often become familiar with power structures within different departments and gain a feel for what can be done to remedy the situation based on previous experiences of other complainants.

Problem Solving

After the storytelling and information gathering phase of the process both the ombuds and mediator use the art of questioning to surface interests and the many different facets of the problem. Although both the mediator and ombuds engage in problem solving there is a remarkable difference between the two. In the mediator's setting both disputants are present and take an active role in brainstorming to come up with possible solutions. From the place of common ground the disputants work together negotiating on points they disagree until an agreement is reached. There is not an institutional component to the dispute. Because of this policies, procedures, rules and guidelines relevant to the institution and the dynamics of a bureaucracy are not factored into the problem solving process. The disputants are not referred somewhere else for help resolving the issue or apprised of existing formal grievance mechanisms at their disposal. In mediation an intervention plan (specific steps for the ombuds and specific steps for the complainant) are not designated for the disputants and mediator after conclusion of the mediation session.

The complainant comes to the ombuds for solutions. Prior to coming to the ombuds the complainant, in most cases, has already attempted to resolve their issue. In the author's experience the ombuds office encouraged the complainant to exhaust all options before coming to the ombuds for help. The ombuds takes an impartial position and communicates to the complainant that he/she cannot advocate for the complainant but can and will advocate for a fair process. Additionally, the matrixes of issues brought to the ombuds are much more complex requiring greater use of analytical problem solving skills and less intuition than with mediation. In order to effectively strategize the ombuds must be able to surface and identify all the elements of the problem, understand the inter-relationship of elements, understand how altering one element will effect another, and be sensitive enough to know which course of action best suits the complainant's needs. The ombuds might be aware of how existing dynamics impact a situation and what available option would best serves the complainant's objectives. For example, a graduate student might feel it unwise to approach a powerful faculty member directly about how an excessive 'unfair' workload is significantly interfering advancing to candidacy. Graduate students at times fear that if they are perceived as individuals that "rock the boat" their professional futures may be dampened by the negative effects of harmful academic politics. Given the complexity of institutions and the human condition no two cases are alike.

Final Phases of the Process

After the problem solving phase of mediation disputants enter into the final phases of mediation. The final phases include negotiating negotiating the differences and formulating an agreement. Agreements are reviewed, written down, and signed by the disputants. Each disputant receives a copy of the signed

agreement. The agreement includes the “terms of who will do what, by when, where, etc.” (Cloke 2000). The process is then closed by the mediator. Closure includes congratulating and complimenting both parties on their success (Cloke 2000). At this point the relationship is terminated between the mediator and the disputants (unless of course the disputants choose to engage the mediator’s services in the future). In the final phases of the first meeting in the ombuds process a number of things could occur.

In some cases the complainant merely wants to come to the ombuds to feel heard and validated. If this is the case then no further action is taken by the ombuds or the complainant, and the ombuds moves on to closure of the case. The complainant leaves feeling better having been heard.

In the ombuds process there are some cases where not all first meeting objectives are realized requiring subsequent meetings. If the ombuds and complainant have been able to finish the problem solving phase and strategize to develop an action plan, both the ombuds and complainant take respective steps necessary to actualize the plan. Additional meetings may be required to problem solve for curve balls, regroup after gathering additional information, evaluate how the action plan is working, meet with the initial complainant and respondent(s) that come forward to present their perspective(s), and/or for the ombuds to serve as a coach for the complainant in following through with his/her portion of the intervention plan.

Several days, weeks, months, or even years later the campus ombuds process is concluded and the case closed. Case closure usually includes an expression of gratitude from the complainant. The ombuds may follow up with a phone call a month or two after the issue is resolved. The ombuds, at his/her discretion destroys the complainant’s files. Ombuds may utilize cases to create

case studies, redacted for confidentiality, for use in office updates, reports, and for presentations in educational venues. Notes are made of complaint trends, system glitches, and ongoing problems. Recommendations are made to the appropriate officials and on occasion these results in the ombuds playing the role of a change agent.

Concluding Remarks

It is important to note that the empirical evidence to substantiate the author's view is the result of considering one style of ombudsing and one style of mediation[13]. In that they are both very much art forms this work represents a point of departure for further discussion. It is unrealistic to assume that a single campus ombuds process is definitive and fixed. The first generation of campus ombuds is on the cusp of giving way to the second generation of campus ombuds. Ombuds practices have now have been developed, tried, and improved upon. It is the author's hope that this work will inspire first generation practitioners to pause for self-reflection and consider their respective ombudsing and mediation processes, and after self-reflection make the time to qualify and articulate respective processes and bring the information to the ombuds discussion table. It is also the author's hope that these observations will be brought to the discussion table in professional venues with the intent of working toward developing the educational materials that would be suited for an ombuds certification program. Such noble endeavors hold the potential to contribute to the betterment of the field of ombudsing.

APPENDIX II: The Mediation Process: Center for Dispute Resolution

Master mediator, Kenneth Cloke, teaches an eclectic North American model of mediation. The model draws from elements indicative of different forms of mediation[14] as well as items of Cloke's invention. Following are the eight steps that Kenneth Cloke identifies in his Center for Dispute Resolution Mediation Training Manual (Cloke 2000).

1) **Set the Stage**: The mediator sets the space up to encourage dialog. Chairs are situated with a comfortable distance between parties with no table in-between. The mediator welcomes the participants and introductions are made. The mediator provides the parties with an overview of the mediation process. Ground rules are discussed and preliminary questions about the process are addressed (Cloke 2000).

2) **Listen to the Stories**: The facilitator asks the "power-down"[15] party to tell their story from their point of view. The facilitator uses active listening skills such as clarifying, restating, and summarizing to help the parties better understand the nature of the problem. In Kenneth Cloke's view there is no conflict without a story, what is "truer than truth" is the story itself, and the story often has many different layers. Use of active listening skills helps the participant to surface underlying layers where the root of the problem often lies. The power-up party is then invited to tell their story (Cloke 2000).

3) **Acknowledge the Emotions:** Cloke identifies three components of conflict; two or more parties, a disagreement, and the existence of negative emotions[16]. When negative emotions surface they are acknowledged and validated. When the charge of negative emotions is released parties are able to move beyond them. At this phase the mediator identifies the issues for problem solving and negotiation (Cloke 2000).

4) **Surface the Interests:** The facilitator works with both parties to surface the underlying interests. This is managed not only by asking "what they want, but *why* they want it." (Cloke 2000)

5) Solve the Problems: The facilitator and the parties work together brainstorming and discussing possible practical solutions to the identified problems (Cloke 2000).

6) Negotiate the Differences: The mediator helps the parties collaboratively negotiate what they do not agree upon. The mediator encourages the parties to focus "on the problems rather than the people; interests, rather than positions; on the future rather than the past; and to generate options that are mutually satisfactory solutions" (Fisher, Ury 1983; Cloke 2000).

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[14] Examples of other forms of mediation include facilitative, evaluative, and transformative.
[15] Power down refers to the individual who does not have as much "power" as the other party. For instance, if the dispute is between a manager and an employee, the employee would be considered the "power down" party. (Cloke, 2000)
[16] Examples of negative emotions include: distrust, anxiety/worry, disappointment, and frustration.

7) Review the Agreements: The outcome of the negotiation is written down in a contract which is signed by both parties. Both parties receive a copy of the signed agreement (Cloke 2000).

8) Close the Process: The facilitator compliments and congratulates the parties on their success and sends them on their way "feeling good about themselves and what they have accomplished" (Cloke 2000).

APPENDIX II

Author's style of campus ombudsing. The arrows to the right indicate at what different phases a complainant would finish the ombuds process and why. Please note that although steps are delineated – contingent upon the case – the steps may not be followed in a linear fashion. Although a structure is indicated an ombuds process is more of a structured improvisation rather than a predictable rigid structure adhered to in all cases.

A. PRELIMINARY PROCEEDINGS

1. INITIAL CONTACT → Either:Provide Information → **EXIT PROCESS**
→ Referrral to Other Dept.
→ Answer a simple straightforward question

- Telephone call
- Walk In
- Referred by another department

2. LOG IN COMPLAINANT

- Name, contact number, staff/student/faculty status are entered into a confidential phone log

3. INTAKE INTERVIEW: Conducted by Assistant to the Ombuds or Assistant Ombuds. Sometimes the intake interview takes place at the first meeting.

- Gather Information → Referral Out → **EXIT PROCESS**
- Set up appointment with Ombuds → Straightforward Case
- Relay information to Ombuds
- Confidentiality Agreement & Guidelines Form Reviewed and Signed by Complainant
- Ombuds Intake Information Form Filled out Gathering Statistical Information

B. PREPARATION

1. COMPLAINANT PREPARES

- Reflection: Complainant reflects on any preliminary counsel offered
- Gathers materials: Complainant gathers relevant materials for review by ombuds

2. OMBUDS PREPARES

- Case Specific Research: Ombuds conducts case specific research such as policy review, preliminary phone calls to other departments to gather information
- Debriefing with Colleagues: Ombuds discusses information with individual who conducted an intake interview.

C. FIRST MEETING

1. WELCOME & ORIENTATION*:* Ombuds welcomes complainant, offers a glass of water, reviews confidentiality agreement with complainant, answers preliminary questions, addresses immediate concerns, and attempts to set the complainant at ease with use of humor.

2. GATHER INFORMATION

- Storytelling of complainant Who, What, When, Where, Why, How
- Surfaced Emotions: negative emotions are acknowledged and processed.

3. SUPPORT & FEEDBACK

- Listening Skills-Reflecting Back, Clarifying, Restating, Empathetic
- Therapeutic benefits for the complainant

4. EDUCATION

- Ombuds apprises complainant of pertinent Policies, Procedures, Guidelines, Laws pertinent to the case

5. BRAINSTORMING

- Possible Courses of Action Discussed
- Surfacing complainant intent, wishes, desires

- Surfacing Interests
- Surfacing Deeper Layers of the "Story"
- Reframing

6. CLARIFICATION OF COMPLAINANT'S GOALS, WISHES, DESIRES

- Ombuds works with complainant to surface which courses of action are most appealing to the complainant, what "feels right" to the complainant given all of the factors.

7. PROBLEM SOLVING & STRATEGY DEVELOPMENT: Consideration of any of the following. Work with complainant to create a "strategy" or "intervention plan" (Price Spratlen,)

- Goals of complainant
- Environment in which the problem/conflict exists
- Power Structures
- Personality, health, lifestyle of complainant, life/work/educational factors, cultural considerations, etc.
- Departments and other parties involved as the "respondent" or source of complaint
- Identification of the Respondent or Source of the Complaint; Consider "other vantage points"
- Existing Policies, Procedures, Guidelines, Contracts, Union Representation-Campus/Non Campus Specific
- Grey Areas/Ambiguity in the System
- Possible Courses of Action/Ramifications
- Steps the Ombuds can take, Steps the complainant can take
- Support Systems
- Is mediation, restorative justice, or a facilitated discussion an option (other ADR techniques)
- Working up the food chain
- Witnesses
- Existing Documentation –did you get it in writing

D. IMPLEMENTATION

Complainant and ombuds proceed in an agreed upon direction. The process unfolds contingent on outcome of the initial strategy. Receipt of additional information, unexpected turns, need for additional meetings, and revision of strategy. Subtle play of implementation, comments, and additional implementation. Ombuds may or may not continue to be a part of the process of complaint resolution. Section 1. gives exit and alternative process strategies, which in itself is a part of the ombuds process. Section 2. Illustrates continuing ombuds process strategies.

I. STRATEGY-EXIT AND ALTERNATIVE PROCESS

a) Referred Out EXIT PROCESS → Ombuds follow-through
"Heads Up" given to referred agency

b) Mediation Process → Complaint Resolved → **EXIT PROCESS**
Distinctive Tool
Ombuds "Hat"
Ombuds Follow-up

c) Restorative Justice → Complaint Resolved → **EXIT PROCESS**
Distinctive Tool
Ombuds "Hat"
Ombuds Follow-up

d) Complainant chooses not
To pursue matter further → **EXIT PROCESS**

e) Complaint Resolved at First meeting → **EXIT PROCESS** Ombuds Follow-up

f) Complainant empowered and informed about how to resolve the issue without further assistance → **EXIT PROCESS** Ombuds follow-through

II. STRATEGY-CONTINUATION OF OMBUDS PROCESS

1. OMBUDS STEPS

- Research-Open and/or Concealed
- Debrief with associates
- Continued communication with complainant
- Fact finding
- Feedback on complainant
- Additional meetings
- Troubleshooting for curveballs
- **Surfacing other perspectives (respondents)**
- Additional information gathering
- Communication with other departments → **SYSTEM FEEDBACK**
- Informal investigation
- Action on behalf of complainant
- Continued debriefing → **CHANGE AGENT**
- Create file

2. COMPLAINANT STEPS

- Chooses strategy
- Pursues path to resolution
- Continued consultation with ombuds
- Problem-solve for "curve balls"
- Support systems
- Additional meetings
- Implementation of revised strategies
- Contact with additional departments/individuals
- Information gathering
- Working up the food chain-informal to formal processes

E. CONFLICT/PROBLEM/COMPLAINT RESOLVED (or brought to the fullest degree of resolution possible which may mean that the complaint is not resolved to the complaint's satisfaction)

F. CLOSURE

a. Follow-up: ombuds contacts complainant to "see how things are going"
b. Thank-you: often times the complainant thanks ombuds-email, visit, letter, telephone call, flowers, and cards
c. Reflection: on occasion complainant and ombuds meet to reflect upon process
d. Files: after one year the file is destroyed
e. Case Studies/Annual Reports
Ombuds may utilize cases to create a case study, redacted for confidentiality, for use in office updates, reports, and for presentations in educational venues. Notes are made of complaint trends, problematic areas, and recommendations are made to remedy ongoing problems, and to problem solve for system glitches within office updates/reports. Our office has been

experimenting with different ways of being a feedback mechanism exploring utilizing an "informal" approach to giving feedback.

g**. OMBUDS** Rejuvenation

Included in the UCSB Campus Ombuds Process are time, breadth, space, and energy for healthy means to rejuvenate the spirit, soul, mind, and body: either through physical activity, hobbies, the arts, or attending professional ombuds conferences.

TABLE 1: BROADLY JUXTAPOSING MEDIATION AND OMBUDSING		
MEDIATION	**COMMON GROUND**	**OMBUDSING**
	Both belong to the family of alternative dispute resolution (ADR), draw from the same foundation of knowledge, and adhere to Standards of Practice.	
	Use of the arts of active listening, questioning, & storytelling	
	Empathy is an essential component of the process	
	Informal, confidential, voluntary process	
	Common roles: Host/ess*, Interior Designer, Educator, Listener, Playing field leveler, counselor, emulator	
Certification and Masters in Dispute Resolution available		Certification in ombudsing only within the field of Long Term Care Ombudsing. Masters in Ombudsing not available.
Existence of "mediator's privilege"		"ombuds privilege" not in all States
Pay for services		Services free
Mediator employed by the disputants. No reporting relationship to an entity.		Ombuds employed by the campus with reporting relationship to high level official.
Basic Function: Mediating Disputes		Basic Function: Complaint handling
It is left to the disputants to determine what is "fair" or what they want		Ombuds advocates for not one side or another but a fair process.
Meet with two or more disputants		Receive a complaint from one complainant
ROLES: The mediator does not play the following roles an ombuds may play: coach, social worker, exculpatory, change agent, crisis coordinator, restorative justice facilitator, investigator, fact finder, feedback, advocate,		ROLES: The ombuds does not play the following roles a mediator may play: chair, rule maker, moderator
Use of caucusing		No use of caucusing
No use of investigation or verification		Use of complaint investigation, complaint

		verification
No use of confidentiality agreement, intake forms, complainant files as in ombudsing.		No use of a pre-mediation agreement and discussion guidelines as in mediation.
Don't keep statistics, write annual reports, etc.		Keep statistics, may write annual reports, provide office updates, track complaint trends, make recommendations
No use of moral reasoned persuasion, power of publication, power of criticism		Use of moral reasoned persuasion, power of publication, power of criticism
Not involved with system of organization, does not refer to other agencies or departments.		Interaction with other departments in case management, makes referrals
Process complete within a single session with disputants passing through all steps of the process		Process usually takes more than one session to complete. Complainant may not pass through all possible steps of the process. The respondent may never enter the process

TABLE 2: JUXTAPOSING A MEDIATOR AND OMBUDS PROCESS		
Mediator Process		
1. Set the Stage	Ombuds also sets the stage in introductions, intake, and orientation.	
2. Listen to the Stories: two or more disputants.		Ombuds initially listens to the story of **one** complainant – not two or more – this occurs after initial meeting
3**.** Acknowledge the Emotions		Negative emotions not always present.
4. Surface the Interests	Ombuds also surfaces interests.	
5. Solve the Problems	Ombuds also problem solve.	
6. Negotiate the Differences		Negotiation is not a part of the ombuds process in that the ombuds initially deals with one complainant.

TABLE 2 CONTINUED: JUXTAPOSING A MEDIATOR AND OMBUDS PROCESS		
6. Review the Agreements		There is no review of agreements in the ombuds process unless the ombuds process leads to arranging mediation.
8. Close the Process		Ombuds also closes the process.
		Ombuds Process
		A. Preliminary Proceedings
		1. Initial Contact
Mediator does not keep a disputant log for statistical purposes.		2. Log in of Complainant
Mediator does not conduct an intake interview.		3. Intake Interview
		B. Preparation
Disputant does not gather materials to bring to first mediation meeting. No special preparation.		1. Complainant prepares
Mediator does not do institutional policy, rules, procedures research prior to the mediation for educational purposes. Mediator also does not debrief with colleagues about the case before mediating.		2. Ombuds prepares
		C. First Meeting
	Mediator also welcomes and orients disputants	1. Welcome and Orientation
Mediation process more oriented to storytelling. Allowing disputants to air respective stories.		2. Gather information: who, what, when, where, why
Mediator focuses on facilitating the process keeping disputants on track.		3. Support & Feedback
Mediators do not educate disputants about pertinent rules, policies, and guidelines.		4. Education
	The mediator and disputants also brainstorm for options.	5. Brainstorming, Delineation of Options
The disputants work toward negotiation differences to reach an agreement. A strategy for intervention or problem solving is not developed.	Mediation also has a problem solving phase.	6. Problem Solving & Strategy Development. Creation of an intervention plan. One or more meetings.
The process of mediation does not include an implementation phase. It is left up to the disputants to keep the agreement.		D. Implementation. One or more meetings. May meet with other parties.
The mediator has no more steps in the process once the mediation is complete. The mediator does not do any complaint investigation.		1. Ombuds' Action Plan implemented.
The disputants do not take further steps past the first meeting.		2. Complainant's Action Plan implemented.
No additional meetings.		3. Additional meetings if needed.
Dispute resolved at first meeting.		E. Complaint resolved weeks or months later.
The mediator does not use data from cases for report preparation, complaint trend analysis, and development of statistics. The mediator does not do any follow up once the mediation is complete.		F. Closure & Follow-up

TABLE 3: Issues Handled Juxtaposition

The following table sets the stage for discussion of the similarities and differences between ombudsing and mediation processes. Common ground is identified in the middle column and differences in the outer columns.

Ombuds

Students

- grade disputes
- academic misconduct
- landlord/tenant relations
- professor/student relations
- student/TA relations
- faculty code of conduct violations
- disability issues
- student/student relations
- sexual harassment
- restorative justice process
- graduate student concerns (intellectual property rights, publication issues, advisor/student relations, graduate student attrition rates, etc)
- discrimination based on race, sex, disability, race, age, religion, sexual orientation

Staff

- Disciplinary actions
- management/employee relations
- changes in departmental structure, rules, policies
- bullying & harassment
- promotion/demotion
- reclassification
- work environment
- discrimination
- disability issues

Faculty

- tenure and promotion issues
- disciplinary actions
- violation of the faculty code of conduct
- intradepartmental conflicts
- MSO/faculty relations
- faculty/undergraduate student relations
- faculty/graduate student relations
- intellectual property rights
- publication issues
- discrimination

Mediation

- **Family/Divorce**
- **Neighborhood**: "Disputes involving noise, fences, parking, vandalism, animal complaints, pet control, property damage or maintenance, harassment, minor assaults, and conflicts over money and personal property are some of the types of issues appropriate for mediation."**
- **Landlord/Tenant**: "Disputes involving late payment of rent, evictions, deposits, repairs, damage, rental agreement violations, pets, noise, and neighbor relations"**
- **Business/Consumer**: "Disputes involving service agreements, damage, repairs, refunds, warranty issues, replacements, salesperson complaints, billing, withheld payments, noise, and parking issues, etc."**
- **Victim/Offender**
- **Workplace / Organizational**
- **Small Claims Court**
- **Mandatory**
- **Family**

**Quoted from city of Beaverton Dispute Resolution site:
<http://www.ci.beaverton.or.us/departments/disputeresolution/dispute_mediation_types.html> (26 May 2004)

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[1] **Areas in Need of Further Development**

Howard Gadlin, in his article "In Practice", points out that the first generation of campus ombuds were "truly amateurs". Gadlin acknowledges that the "first organizational[?] ombuds made up the job as they went along, guided only by establishing documents that provided just a skeletal framework identifying the limits of their responsibilities and powers (Gadlin 2000)." Although these first organizational ombuds were amateurs they conducted the research and self-reflection necessary to make tremendous contributions to the existing body of knowledge. To spite the contributions made, given the copious amounts of new information generated by the effects of 'ombudsmania', it is realistic to assume that the theoretical framework developed to date is in need of further development. The field itself continues to grow, define, and redefine itself. In order to play catch-up with ombudsmania, and stay abreast of change, it is necessary to develop the projects necessary to further develop the theoretical framework delineating the ombuds institution. It is the author's view that areas in need of further exploration include cultivating an in-depth understanding of ombuds processes; gathering the information necessary to create a single volume suited for teaching the nuts and bolts of existing ombuds theory in a college level Ombuds 101 course; exploring the value of developing certification programs in other fields; researching the histories of professional ombuds organizations; catching up with the history of ombudsing to develop histories of sectors developed since the onset of ombudsmania, obtaining the oral histories of first generation ombuds and ombuds scholars; researching the history of exclusionary tendencies and ombuds categorization in order to effectively address the categorization challenge; development of a theoretical framework suitable for conducting single sector and cross-sector studies – studies that will enable the field to both better understand the evolution, diversification, and growth of the concept and to develop the materials necessary to develop sector specific educational materials for new ombuds. The author has begun preliminary research in some of these areas, but for now, sets these topics aside for continued future exploration and narrows the focuses on a single topic – that of how the ombuds process differs from the mediation process. In order to set the stage for further discussion on this topic the author presents information about how she gathered the empirical evidence necessary to support this view and provides a brief overview of ombudsing and mediation.

[2] This clause and quotes are attributed to an anonymous editorial comment by the editorial board of the Cal Caucus Journal as are clarification and consistent use of terms other than "client" (disputants for mediation, complainant for ombudsing).

[3] Although "steps" were identified it is important to note that contingent on the case the flow of problem solving may differ.

[4] These steps do not necessarily progress in a linear fashion.

[5] This ombuds process is defined in the article published on The Ombudsman Circle's website entitled "Catch-up" with Ombudsmania: Expanding The Theoretical Base Of Ombudsing: A Campus Ombuds Process, Part I. This work was sent out through the T.O.A., UCOA, USOA, and CCUOA list servs for wide review of the paper. Commentary and feedback was integrated into the work before website publication. The work is posted online in hopes of achieving a wider review for consideration, commentary, and critique. The work marks an interesting place in my personal growth in that at the time it was written a review of the literature had not uncovered other ombuds processes. It was only after the work was written that I received

Vice, J. W. (1994) "University Ombuds Roles" California Caucus of College and University Ombudsman: UCI Ombudsman: The Journal 1994 <http://www.ombuds.uci.edu/JOURNALS/1994/ombuds_role.html> (18 May 2004)

information from other ombuds (in places I would not have been able to locate) about their respective processes.

[6] Please review The Ombuds Reading and Resource Room at www.ombudsmancircle.com for an idea of what exists electronically. Additionally the author sifted through Stanley V. Andersons 1,200 article collection, read the great majority of articles published by the International Ombudsman Institution, read all books and articles on ombudsing that could be obtained through the UC library system, read a great deal on mediation, conflict resolution, all existing Standards of Practice, and basically – anything the author could get her hands on.

[7] These are acronyms for professional ombuds organizations which respectively are: The Ombudsman Association, University and College Ombuds Association, The United States Ombudsman Association, and the Association of Canadian Campus and University Ombudspersons.

[8] Derived from the author's present research about the history of the categorization of ombuds.

[11] Mediators, in a court of law, are protected from divulging information disclosed to the mediator in a mediation. For ombuds, this is handled by the courts on a case by case basis.

[12] Please note than although an ombuds initially works with a singular complainant the case may require work with other parties. As an anonymous Cal Caucus editor point out "In my practice a few years ago we began tracking the cases where we dealt with individual parties and were surprised to learn how often we dealt with multiple parties in the same case. Sometimes both or multiple parties came to see us independently. Other times we would call one or more parties came to see us independently. Other times we would call one or more parties after meeting with the first. But this occurred much more than we expected. And, I believe it is likely that many ombuds have this experience in their practice".

[13] An anonymous member of the Cal Caucus Editorial Board points out that "the wide range of complaints, conflicts, and disputes encountered by an ombuds makes it unrealistic to describe a single "process" for ombudsing. The author wholeheartedly agrees with this observation. The author notes that although there may not be a single "process" for ombudsing, preliminary research indicates that there very well may be a common core from practice to practice. The art of the work is the individuated touch of the ombuds (as well as other factors such as the institution and communities served) which results in variations on the common core practice.